IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8234 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARISH @ HARI JAYRAMDAS BHRAMKATRI (SINDHI)

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/03/2000

ORAL JUDGEMENT

#. Commissioner of Police, Baroda City, Baroda passed an order on August 17, 1999 in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the present petitioner under the provisions of the PASA

Act.

#. The grounds of detention indicate that the detaining authority took into consideration three offences registered against the detenue besides the statements of three anonymous witnesses. The detaining authority exercised power under section 9(2) of the PASA Act in respect of these witnesses on being satisfied about the genuineness of the fear expressed by the witnesses in respect of their person and property qua the petitioner. The detaining authority considered the possibility of resorting to less drastic remedies and came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to the public order and is required to be immediately prevented from pursuing his illegal and anti-social activities. The authority was satisfied that resorting to the detention under the PASA Act is the only efficacious remedy for immediately preventing the detenue from pursuing his illegal and anti-social activities.

#. The detenue/petitioner has challenged the order of detention on various grounds. However, the learned advocate Mr. S.R. Patel, appearing for the petitioner has restricted his arguments to the fact that the order is bad in law on account of consideration of extraneous and irrelevant material by the detaining authority while passing the order of detention. Mr. Patel has drawn the attention of this Court to the grounds of detention, wherein the detaining authority has branded the detenue as "bootlegger". The detaining authority took into consideration an offence registered with the Baroda City Police Station CR I 82/99 for the offences punishable under sections 324, 504 and 114 of IPC read with section Bombay Prohibition Act. Mr. Patel submitted that when the detenue is branded as "bootlegger", consideration of an offence under the IPC would be an irrelevant factor and therefore, the authority having considered the irrelevant and extraneous material, order would stand vitiated. Mr. Patel placed reliance on judgment of a Division Bench of this Court in Special Criminal Application No. 1183/92, rendered on April 13, 1993 (Coram: A.P.Ravani & J.M. Panchal, JJ).

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. Having regard to the contentions raised by learned advocates for the parties, it is clear that the detaining authority has, in fact, took into consideration an offence registered with Vadodara City Police Station

being CR I 82/99, which is not under the Bombay Prohibition Act. The detenue has been branded as a bootlegger. The definition of "bootlegger" is given in section 2(b) of the PASA Act, which is as under.

> "(b) "bootlegger" means a person who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any provision of the Bombay Prohibition Act 1949 and the rules and orders made thereunder, or of any other law for the time being in force or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the things described above by or through any other person, or who abets in any other manner the doing of any such thing;"

The detaining authority has committed an error in taking into consideration the extraneous material in the form of an activity not falling within the definition of the bootlegger as defined under the PASA Act. The material therefore, for this purpose, is irrelevant and extraneous one. The satisfaction of the detaining authority on the question of the detenue being a bootlegger would therefore stand adversely affected so far as its genuineness is concerned and would stand vitiated.

#. Division Bench in the case between Junedahmed Salemohmed Pathan vs. State of Gujarat in Special Criminal Application No. 1183/92 had similar question to be dealt with wherein the detaining authority labelled the detenue as dangerous person and took into consideration one case under the Bombay Prohibition Act and the Division Bench observed as under.

> "This is certainly an irrelevant circumstance as far as consideration as to whether the person is a dangerous person or not is concerned. Thus, while arriving at the satisfaction on the question that the detenue was a dangerous person, the detaining authority took into consideration the irrelevant material. Therefore, the satisfaction arrived at by the detaining authority cannot be said to be genuine and it stands vitiated."

In view of this decision, the present detention order

also stands vitiated on account consideration of irrelevant/extraneous material in the form of an offence registered against the detenue punishable under the IPC and Bombay Prohibition Act (activity not contemplated in the definition of a "bootlegger"). The subjective satisfaction about the petitioner being a bootlegger is, therefore, vitiated so also the detention order. The petition therefore deserves to be allowed on this ground alone.

#. The petition is allowed. The impugned order of detention passed by Commissioner of Police, Ahmedabad City, Ahmedabad, on August 17, 1999 is hereby quashed. The detenue Harish alias Hari Jayramdas Bramkatri (Sindhi) is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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